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**VIA E-MAIL AND FEDERAL EXPRESS**

Mr. Craig Cross  
California Department of Water Resources  
Division of Integrated Regional Water Management  
Financial Assistance Branch  
Post Office Box 942836  
Sacramento, CA 94236

**RE: Proposition 1E Round 1 Stormwater Flood Management Grant Draft Funding  
Recommendations: City of Palmdale's Upper Amargosa Creek Flood Control,  
Recharge, and Habitat Restoration Project**

Dear Mr. Cross:

Brownstein Hyatt Farber Schreck, LLP represents the Antelope Valley Groundwater Agreement Association ("AGWA") and presents these comments on AGWA's behalf regarding the Department of Water Resources' ("DWR") draft funding recommendations for the award of a Proposition 1E Round 1 Stormwater Flood Management Grant to the City of Palmdale ("City") for its Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project (the "Project"). AGWA appreciates the opportunity to submit comments on the proposed grant. While AGWA does not oppose grant funding to the City for flood control management, AGWA wishes to ensure that the proposed grant has no impact on AGWA's protest to the City's water right Application 31744, presently pending before the California State Water Resources Control Board ("SWRCB").

AGWA is composed of landowners whose property overlies the Antelope Valley Groundwater Basin ("Basin") and who have been named as defendants in the ongoing Court adjudication of water supplies in the Antelope Valley. The rights to the Basin's groundwater are presently the subject of a Basin-wide adjudication (the "Adjudication").<sup>1</sup> AGWA members exercise overlying groundwater rights by extracting groundwater from the Basin for beneficial use on their properties. Under California law, these landowners have prior rights to the waters of the Basin.<sup>2</sup>

<sup>1</sup> Included actions are *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Los Angeles, Case No. BC 325201; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Kern, Case No. S-1500-CV-254-348; *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, *Diamond Farming Co. v. City of Lancaster*, *Diamond Farming Co. v. Palmdale Water Dist.*, Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

<sup>2</sup> *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 924-25.

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The City has filed Application 31744 with the SWRCB, seeking appropriative water rights to the waters of Amargosa Creek that recharge the Basin. On June 2, 2009, AGWA filed a protest to Application 31744, noting that if the Basin is in overdraft, as the City has claimed throughout the Adjudication, all of the Basin's natural recharge is required for groundwater users – including overlying owners with prior rights to this groundwater, such as the members of AGWA. Based on Amargosa Creek's hydrologic character as a tributary of the Basin, and the City's representation that the Basin is in overdraft, there is no available water for appropriation. Any reduction in groundwater right holders' access to Amargosa Creek's recharge to the Basin will injure the prior rights of AGWA's members.<sup>3</sup>

According to DWR staff's Proposal Evaluation for the City's grant request for the Project, one of the Project objectives is to channelize a portion of Amargosa Creek, construct eight recharge basins, as well as to provide a reliable water supply to meet the Antelope Valley region's future water demands. It appears that through Application 31744 the City seeks rights to the waters that will be detained for flood control purposes as part of the Project.

As stated above, AGWA has no objection to, but rather supports DWR's award of grant funding to the City's Project, to the extent it will provide flood control benefits within the City and benefit the Antelope Valley generally. However, AGWA requests that any grant to the City make clear that it has no impact on the SWRCB's pending processing of Application 31744 and AGWA's protest thereto.

Thank you for the opportunity to comment on DWR's draft funding recommendations. Please contact me for any additional information you may require.

Sincerely,



Bradley J. Herrema

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<sup>3</sup> While the City proposes to divert from Amargosa Creek in order to recharge the Basin, any recharge under a City appropriative water right would not accrue to the benefit of overlying landowners, and should be treated as any other diversion that would diminish the Basin's natural recharge.